IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3343 of 1984

WITH

SPECIAL CIVIL APPLICATION NO. 447 OF 1987

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE K.A.PUJ

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL NATVARLAL AMBALAL

Versus

SALESTAX OFFICER (I) MAMLATDAR OR HIS SUCCESSOR IN

Appearance:

1. Special Civil Application No. 3343 of 1984
   MR RD PATHAK for the Petitioners
   MR SUDHIR MEHTA, AGP for the Respondents

2. Special Civil Application No. 447 of 1987
   MR MANAJI G. THAKORE for Petitioners - ABSENT
   MR SUDHIR MEHTA, AGP for the Respondents

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE K.A.PUJ

Date of decision: 25/02/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI for the Court)

1. Both these matters are inter-connected and involve common questions and are, therefore, disposed of together.

2. In Special Civil Application No. 3343 of 1984, the petitioners were partners of M/s Patel Jayantilal Babulal, a firm doing business of selling tea at Mehsana. According to the petitioners, upto 4th November 1975, only the petitioners Nos. 2, 4 and 5 were the partners and from 4th November 1975, the petitioners Nos. 1 and 3 joined the firm in their capacity as Kartas of their respective HUFs. The petitioners have challenged the recovery proceedings initiated by the respondent No.1 Sales Tax Officer against them and the proclamations at Annexures A/1, A/2 and A/6 to A/10 under Section 165 of the Bombay Land Revenue Code, for public auction of the properties which were attached for realisation of the sales tax dues on the basis of the garnishee provisions of section 48 of the Gujarat Sales Tax Act, 1969. The respondent No.1 had proceeded against the petitioners under section 48 of the Act in respect of the amount which was due to be paid by the firm in which the petitioners were partners i.e. M/s Patel Jayantilal Babulal to the dealer M/s Patel Babulal Parsottamdas, also of Mehsana, which firm was in arrears of sales tax dues.

2.1 Special Civil Application No. 447 of 1987 has been filed by Patel Prabhudas Ambalal, a partner of the firm of M/s Patel Jayantilal Babulal. This petitioner is also the petitioner No.3 in Special Civil Application No. 3343 of 1984. In this petition, prayers similar to those made in Special Civil Application No. 3343 of 1984 have been made against the initiation of the recovery proceedings pursuant to the impugned proclamation at Annexure `A' to the petition. The petition virtually repeats the stand taken by this petitioner in the above joint petition.

3. It has been contended on behalf of the petitioners that the petitioners' firm was dissolved with effect from 31st December 1982 and therefore, they were

not liable for payment of the amount which was due to be paid by their firm to M/s Patel Babulal Parsottamdas, the dealer who was in arrears of the sales tax dues. It was also contended that the petitioners were not given a proper hearing for determining their liability to make payment under section 48 of the Act and the impugned action was, therefore, violative of the principles of natural justice and void. It was further contended that the signature obtained on the copy of the notice under section 48 said to have been served on 21st June 1982 was not really the signature of the petitioner No.5.

4. The learned counsel appearing for the Revenue, on the other hand, contended that an amount of Rs.3,95,773=00 was due to be paid by M/s Patel Jayantilal Babulal to the dealer firm M/s Babulal Parsottamdas and therefore, the sales tax dues could be recovered by issuing notice under section 48 of the Act. The amount was less than the arrears of sales tax recoverable from the dealer firm, which amounted to Rs.14.64,600=00. According to the respondents, as stated in their affidavit-in reply, the petitioner No.5 - Ugarabhai had appeared on 12th January 1983 before the Sales Tax Officer pursuant to a notice and admitted in writing the liability of the debtor firm and gave an assurance that the amount would be paid up. Affidavits have been filed on behalf of the respondents in both the petitions, taking up similar stand.

5. Under section 48 of the Gujarat Sales Tax Act, 1969, a special mode of recovery of the sales tax dues has been provided for by laying down that, notwithstanding anything contained in any law or contract to the contrary, the Commissioner may, at any time or from time to time, by notice in writing, a copy of which shall be forwarded to the dealer at his last address known to the Commissioner, inter alia, require any person from whom any amount of money is due, or may become due, to a dealer and on whom notice has been served under sub-section (4) of section 47 to pay to the Commissioner, either forthwith upon the money becoming due or being held or at or within the time specified in the notice, so much of the money as is sufficient, to pay the amount due by the dealer in respect of the arrears of tax, penalty or interest, or the whole of the money when it is equal to or less than that amount. It is also provided therein under the Explanation that, any person discharging any liability to the dealer after receipt of the notice referred to in this section, shall be personally liable to the Commissioner to the extent of the liability discharged, or to the extent of the liability of the

dealer for tax, penalty or interests, whichever is less. When objection is sent to the notice, a hearing is required to be given.

6. It appears from the averments made in the affidavits in reply filed on behalf of the respondents, which have not been controverted, that the firm of M/s Patel Babulal Parsottamdas paid only Rs.80,222=00 towards its sales tax liability of Rs.9,12,815=00 in S.Y. 2037. The firm of M/s Patel Jayantilal Babulal in which the petitioners were partners owed to the dealer a sum of Rs.3,95,773=00. Proceedings were, therefore, initiated under section 48 of the said Act for recovery of that amount. These proceedings are in the nature of garnishee proceedings. A notice under section 48 of the Act was served on the firm of M/s Patel Jayantilal Babulal on 21st June 1982. Since it did not respond, another notice was served on 11th January 1983 on the petitioner No.5 Ugarabhai, who was one of the partners of the firm, requiring him to attend the Sales Tax Office on 12th January 1983 with the books of account of the firm, relating to the S.Y. 2038 and S.Y. 2039. The petitioner No.5 - Ugarabhai attended the Sales Tax Office pursuant to that notice on 12th January 1983 and gave a statement in writing that a sum of Rs.3,46,165=00 was due by their firm M/s Patel Jayantilal Babulal to be paid to M/s Patel Babulal Parsottamdas as on 21st June 1982, being the date on which the notice was served under section 48 of the said Act on that firm. He stated that, after the receipt of that notice, the amount was paid by their firm to M/s Patel Babulal Parsottamdas. These facts have not been controverted at all by filing any rejoinder.

6.1 Even in the Special Civil Application No. 447 of 1987, it has been stated in the affidavit - in reply that the petitioner No.5 - Ugarabhai, Partner of M/s Patel Jayantilal Babulal had, on 12th January 1983, appeared and admitted in writing the liability of the debtor firm to the dealer firm and gave an assurance that the amount would be paid to the sales tax authorities. It would thus appear that a proper hearing was given to the firm of M/s Patel Jayantilal Babulal through its partner by serving a notice under section 48 of the said Act on the firm, and that it was admitted by the partner of the firm that the amount was paid to the dealer after the service of the notice. This fact is also borne out from the letter dated 2nd April 1984, at Annexure A/3 to Special Civil Application No. 3343 of 1984, in which it was stated by the petitioner No.5 - Ugarabhai that the dues of the firm M/s Patel Babulal Parsottamdas were paid up

on 16th July 1982 by the firm of M/s Patel Jayantilal Babulal. Since the notice was served on the firm of M/s Patel Jayantilal Babulal on 21st June 1982, it becomes clear that the payment was made to the dealer firm M/s Patel Babulal Parsottamdas on 16th July 1982 to ward off the liability arising under section 48 of the said Act. Such a subsequent payment to the dealer after the receipt of the notice under section 48 did not absolve the firm of M/s Patel Jayantilal Babulal of its liability to pay the amount, which was payable by it to M/s Patel Babulal Parsottamdas, to the Commissioner. There is therefore no substance in any of the contentions raised by the petitioners.

7. From the facts on record, it is clear that the impugned action of the respondents was justified and taken in accordance with law, warranting no interference by this Court.

Both the petitions are, therefore, rejected. Rule is discharged in each of them with no order as to cost. Interim relief stands vacated in both the matters.

FEBRUARY 25, 2002 [R.K.ABICHANDANI, J.]

[K.A.PUJ, J.]

parmar*